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State v. Ambriz Respondent's Brief Dckt. 44007

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44007
Plaintiff-Respondent,)	
)	Cassia Co. Case No.
vs.)	CR-2015-2064
)	
MARTIN GUZMAN AMBRIZ,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CASSIA**

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts and Course of Proceedings	1
ISSUE	4
ARGUMENT	5
Ambriz Has Failed To Show The District Court Erred When It Denied His Motion To Suppress	5
A. Introduction	5
B. Standard Of Review	5
C. The District Court Correctly Found That The Deputies Had Reasonable Articulate Suspicion To Stop Ambriz's Vehicle	6
CONCLUSION	10
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Delaware v. Prouse</u> , 440 U.S. 648 (1979).....	6
<u>Florida v. Royer</u> , 460 U.S. 491 (1983).....	6, 7
<u>State v. Bishop</u> , 146 Idaho 804, 203 P.3d 1203 (2009).....	6, 7
<u>State v. Brauch</u> , 133 Idaho 215, 984 P.2d 703 (1999)	6
<u>State v. Clark</u> , 135 Idaho 255, 16 P.3d 931 (2000)	8
<u>State v. Diaz</u> , 144 Idaho 300, 160 P.3d 739 (2007)	5
<u>State v. Emory</u> , 119 Idaho 661, 809 P.2d 522 (Ct. App. 1991)	7, 8
<u>State v. Fleenor</u> , 133 Idaho 552, 989 P.2d 784 (Ct. App. 1999)	5
<u>State v. Horton</u> , 150 Idaho 300, 246 P.3d 673 (Ct. App. 2010).....	7
<u>State v. Morris</u> , 159 Idaho 651, 365 P.3d 407 (Ct. App. 2015).....	7, 8, 10
<u>State v. Naccarato</u> , 126 Idaho 10, 878 P.2d 184 (Ct. App. 1994)	8, 9
<u>State v. Neal</u> , 159 Idaho 439, 362 P.3d 514 (2015)	9
<u>State v. Slater</u> , 136 Idaho 293, 32 P.3d 685 (Ct. App. 2001)	9
<u>State v. Valdez-Molina</u> , 127 Idaho 102, 897 P.2d 993 (1995).....	5
<u>State v. Young</u> , 144 Idaho 646, 167 P.3d 783 (Ct. App. 2006)	6, 7
<u>United States v. Cortez</u> , 449 U.S. 411 (1981)	7
 <u>STATUTES</u>	
I.C. § 49–119(18)	9
I.C. § 49–630(1)	9, 10
I.C. § 49-637(1)	10
 <u>CONSTITUTIONAL PROVISIONS</u>	
U.S. Const. amend. IV.....	1, 6

STATEMENT OF THE CASE

Nature of the Case

Martin Guzman Ambriz appeals from the judgment entered upon his conditional guilty plea to felony driving under the influence. On appeal, Ambriz claims the district court erred when it denied his motion to suppress.

Statement of Facts and Course of Proceedings

Ambriz drank approximately eight beers at his home and then began driving. (R., p. 92.) When Ambriz made a turn, both of his passenger side tires went off the roadway and onto the gravel on the side of the road. (Id.) Deputy Zalewski and Deputy Reusze both observed Ambriz's vehicle leave the roadway. (Id.) Both deputies also then saw Ambriz's vehicle quickly jerk from side to side within its lane. (Id.) The deputies initiated a traffic stop. (Id.)

Ambriz failed field sobriety tests and Ambriz's breath results were .209, insufficient, and .195. (R., p. 10.) Because Ambriz had previously been convicted of felony DUI in 2010, the state charged Ambriz with felony DUI. (R., pp. 40-42.)

Ambriz filed a motion to suppress evidence seized as a result of the traffic stop. (R., p. 60.) Ambriz claimed the traffic stop violated his Fourth Amendment rights. (Id.) The district court held a hearing on the motion to suppress. (R., pp. 83-84.)

Deputy Zalewski testified that when Ambriz's vehicle made a right hand turn, both of his right tires fully went off the roadway and onto the gravel. (9/28/15 Tr., p. 7, L. 15 – p. 8, L. 2, p. 15, Ls. 8-11.) She further testified that the

vehicle then started making a “jerking motion.” (9/28/15 Tr., p. 8, Ls. 3-8.) Deputy Zalewski’s police vehicle was equipped with a dashboard camera. (9/28/15 Tr., p. 10, L. 6 – p. 11, L. 24.) The dashboard camera started recording after Ambriz’s right tires fully went off the roadway. (Id.)

Deputy Reusze also testified that she saw Ambriz’s vehicle drive off the road into the gravel. (9/28/15 Tr., p. 30, L. 18 – p. 31, L. 8.) Ambriz testified. (9/28/15 Tr., p. 40, L. 19 – p. 47, L. 5.) Ambriz denied leaving the roadway and driving on the gravel. (9/28/15 Tr., p. 41, Ls. 10-22.) He also denied making any jerking motions with his car. (9/28/15 Tr., p. 42, Ls. 1-3.) Ambriz admitted to drinking approximately eight beers before he drove. (9/28/15 Tr., p. 43, Ls. 2-22.)

The district court denied Ambriz’s motion to suppress. (R., pp. 91-96.) The district court analyzed the credibility of the witnesses and determined that the deputies’ testimony regarding Ambriz’s driving pattern was reliable and credible. (R., p. 95.) The district court also found, in part because of Ambriz’s alcohol consumption, that his “ability to clearly perceive and accurately recall the events surrounding the stop at issue is questionable.” (Id.) The district court concluded:

As set forth above, the deputies testified that the Defendant drove in the gravel on the side of 16th Street and made quick, jerky movements within his lane on Pomerelle Avenue. This driving pattern was not within the broad range of normal driving behaviors. In considering the totality of the circumstances, the deputies had reasonable suspicion that the vehicle was being driven contrary to traffic laws or that other criminal activity was afoot. Therefore, the State met its burden of establishing that the stop of the Defendant’s vehicle was an investigatory detention based upon reasonable suspicion and that it was therefore reasonable and lawful.

(R., p. 95.)

Ambriz pled guilty to felony DUI, but reserved the right to appeal the denial of his motion to suppress. (R., pp. 102-103; 12/22/15 Tr., p. 8, L. 17 – p. 9, L. 16.) The district court entered judgment and sentenced Ambriz to seven years with two years fixed but retained jurisdiction. (R., pp. 136-138; 2/16/16 Tr., p. 11, L. 2 – p. 13, L. 14.) Ambriz filed a timely appeal. (R., pp. 140-141.)

ISSUE

Ambriz states the issue on appeal as:

Did the district court err when it denied Mr. Ambriz's motion to suppress?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Ambriz failed to show the district court erred when it denied his motion to suppress?

ARGUMENT

Ambriz Has Failed To Show The District Court Erred When It Denied His Motion To Suppress

A. Introduction

Ambriz claims the district court erred when it held the deputies had reasonable suspicion that Ambriz's vehicle was being driven contrary to traffic laws or that other criminal activity was afoot. Contrary to Ambriz's argument, the district court did not err. The deputies observed both of Ambriz's passenger side tires completely leave the roadway. Ambriz's vehicle then jerked within its lane of travel. The district court correctly found that deputies had reasonable articulable suspicion to believe that Ambriz had violated traffic laws or that other criminal activity was afoot.

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts." State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). The power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Fleenor, 133 Idaho 552, 555, 989 P.2d 784, 787 (Ct. App. 1999). The appellate court also gives deference to any

implicit findings of the trial court supported by substantial evidence. State v. Brauch, 133 Idaho 215, 218, 984 P.2d 703, 706 (1999).

C. The District Court Correctly Found That The Deputies Had Reasonable Articulable Suspicion To Stop Ambriz's Vehicle

The district court made a factual finding that the deputies observed Ambriz's passenger-side tires drive off the roadway (R., pp. 92-95.) The district also found that Ambriz drove on the gravel and made jerking movements within his lane. (Id.) The district court determined that Ambriz's "driving pattern was not within the broad range of normal driving behaviors." (R., p. 95.) The district court considered the totality of the circumstances and held "the deputies had a reasonable suspicion that the vehicle was being driven contrary to traffic laws or that other criminal activity was afoot." (Id.) As a result, the traffic stop was based upon reasonable suspicion and "therefore reasonable and lawful." (Id.) The district court correctly applied the law to the facts when it denied Ambriz's motion to suppress.

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures." State v. Young, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct. App. 2006) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). Ordinarily, a warrantless seizure must be based on probable cause to be reasonable. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009). However, limited investigatory detentions, based on less than probable cause, are permissible when justified by

an officer's reasonable, articulable suspicion that a person has committed, or is about to commit, a crime. Royer, 460 U.S. at 498; Bishop, 146 Idaho at 811, 203 P.3d at 1210. "An officer may also stop a vehicle to investigate possible criminal behavior if there is reasonable articulable suspicion that the vehicle is being driven contrary to traffic laws." Young, 144 Idaho at 648, 167 P.3d at 785 (citing United States v. Cortez, 449 U.S. 411 (1981)). "Reasonable suspicion requires less than probable cause but more than speculation or instinct on the part of the officer." State v. Horton, 150 Idaho 300, 302, 246 P.3d 673, 675 (Ct. App. 2010) (citation omitted).

On appeal, Ambriz argues that the deputies lacked reasonable suspicion because his driving behavior "did not fall outside the broad range of what can be described as normal" and the "State did not establish, or even argue, that Mr. Ambriz committed a traffic violation." (Appellant's brief, p. 6.) Both of Ambriz's arguments fail to establish the district court erred.

In support of his first argument, Ambriz cites to State v. Emory, 119 Idaho 661, 809 P.2d 522 (Ct. App. 1991), for the proposition that Ambriz's driving pattern fell within the broad range of normal driving behavior. (See Appellant's brief, pp. 7-9 (citing Emory, 119 Idaho at 664, 809 P.2d at 525).) Contrary to Ambriz's argument on appeal, Emory did not create a "normal driving behavior" exception to traffic laws. State v. Morris, 159 Idaho 651, 656, 365 P.3d 407, 412 (Ct. App. 2015), review denied (Feb. 23, 2016). As explained by the Idaho Court of Appeals in Morris:

Emory did not create a "normal driving behavior" exception to traffic laws. We merely used the phrase to denote that the officer had not

seen any activity that would support reasonable suspicion that the driver was under the influence of an intoxicant.

Id. Further, Emory is easily distinguished because Emory never left his lane. See Emory, 119 Idaho at 664, 809 P.2d at 525 (“Emory’s vehicle was in its proper lane and was moving in a straight line down the street. No weaving or crossing of the center dividing line was observed by the officer.”). Here, the deputies saw Ambriz’s vehicle leave its lane. (See R., p. 92.)

The facts here are closer to Morris, where the Idaho Court of Appeals distinguished Emory, and held there was reasonable suspicion to stop Morris because the officers witnessed the vehicle leave its lane. Morris, 159 Idaho at 656, 365 P.3d at 412.

In contrast to *Emory*, the patrol officer witnessed Morris leave his lane when there was no circumstance that would have made it infeasible to drive in Morris’ lane. At this point, the patrol officer had reasonable suspicion of criminal activity in that he had witnessed Morris commit a traffic violation.

Id.

In addition to leaving the roadway, Ambriz’s vehicle also quickly jerked from side to side within its lane. (See R., p. 92.) Jerking movements within the lane of travel can contribute to an abnormal driving pattern that supports a finding of reasonable suspicion. See State v. Naccarato, 126 Idaho 10, 11, 878 P.2d 184, 185 (Ct. App. 1994) abrogated on other grounds by State v. Clark, 135 Idaho 255, 16 P.3d 931 (2000). In Naccarato, the defendant was “jerk[ing] the vehicle to correct its motion in one direction or the other” but the vehicle did not actually leave its lane. Id. Looking at the totality of the circumstances, which included this “jerk[ing]” within the lane, the magistrate and district court found

there was reasonable suspicion for a traffic stop. Id. The Idaho Court of Appeals affirmed. Id. Likewise, in this case, the district court's findings that Ambriz's vehicle left the roadway and made jerking movements supports its conclusion that the deputies had reasonable suspicion to stop Ambriz.

Ambriz's vehicle leaving its lane of travel and driving on the gravel outside the roadway also constituted a traffic violation. "Idaho Code section 49–630(1) requires that drivers drive on the right half of the roadway." State v. Slater, 136 Idaho 293, 298, 32 P.3d 685, 690 (Ct. App. 2001). "The „roadway" means that portion of a highway that is „improved, designed or ordinarily used for vehicular travel." Id. (citing I.C. § 49–119(18)). The roadway does not include "sidewalks, shoulders, berms [or] rights-of-way." Id. Therefore driving outside the lane and off the roadway constitutes a violation of Idaho Code § 49–630(1). See e.g. Slater, 136 Idaho at 298, 32 P.3d at 690 ("Accordingly, when Officer Burns observed Slater's tires cross the fog line, albeit fleetingly, Burns now possessed the requisite reasonable suspicion that Slater had violated I.C. § 49–630 by driving on the shoulder of the highway, rather than on the „roadway.""); State v. Neal, 159 Idaho 439, 445, 362 P.3d 514, 520 (2015) (holding no traffic violation where Neal did not drive on the shoulder outside of the roadway). Here, the district court found that Ambriz's vehicle left the roadway. (See, e.g., R., p. 92 ("Both deputies testified that they saw Defendant's vehicle go off the roadway with at least the passenger-side tires in the gravel on the side of the road. The vehicle then returned to the roadway and turned right onto Pomerelle Avenue.").)

In addition to violating Idaho Code § 49–630(1) by leaving the roadway, Ambriz also violated Idaho Code § 49-637(1), which requires a driver to drive “as nearly as practicable entirely within a single lane.” Here, by driving on the gravel outside of his lane, Ambriz also violated Idaho Code § 49-637(1).

On appeal, Ambriz argues that, because neither the state nor the district court pointed to a specific statute that Ambriz violated, the officers did not have reasonable suspicion to stop him. (See Appellant’s brief, p. 10.) Reasonable suspicion does not depend on whether the state or district court cited a particular code section during the hearing on the motion to suppress. Whether there is reasonable articulable suspicion that a defendant committed a traffic violation is determined based upon the totality of the circumstances known to the officer at the time of the stop. See, e.g., Morris, 159 Idaho at 654, 365 P.3d at 410. Here, under the totality of the circumstances, the deputies had reasonable articulable suspicion that Ambriz committed a traffic violation when both his passenger tires fully left the roadway.

CONCLUSION

The state respectfully requests this Court affirm the judgment of the district court.

DATED this 14th day of September, 2016.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of September, 2016, served a true and correct copy of the attached BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
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